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APPLICATION OF

CINCAP MARTINSVILLE, LLC

CASE NO. PUE010169

For a certificate of public convenience and necessity for electric generation facilities in the City of Martinsville

HEARING EXAMINER'S PROTECTIVE RULING FOR ADDITIONAL PROTECTIVE TREATMENT

July 16, 2001

On July 16, 2001, CINCAP Martinsville, LLC ("CINCAP"), by counsel, filed a motion requesting leave to file the Additional Supplemental Testimonies of Sergio Hoyos and W. Thomas Chaney. In support of the motion, CINCAP states that the Additional Supplemental Testimony is in response to a request by the Commission's Staff to provide certain additional information for the record. Counsel further states that the Additional Supplemental Testimony of Mr. Hoyos is being filed in a public version from which certain information has been redacted and filed separately under seal as Confidential Information as provided in the July 9, 2001, Protective Ruling in this proceeding. Certain other information considered by CINCAP to be competitively sensitive has also been redacted and filed separately under seal as competitively sensitive information.

Also on July 16, 2001, CINCAP filed a motion requesting additional protective treatment for two items of information contained in the Additional Supplemental Testimony of Sergio Hoyos filed contemporaneously with the Commission. In support of the motion, CINCAP states that the information for which additional protection is sought is CINCAP's estimated capacity cost and production cost for the CINCAP Martinsville Project (collectively, "Project Costs"), redacted from page 2 of the public version of Mr. Hoyo's Additional Supplemental Testimony.

Upon consideration of CINCAP's Motions I am of the opinion, and so find, that additional protected treatment is warranted for the Project Costs in this case. Accordingly,

IT IS DIRECTED that the Additional Supplemental Testimonies of Sergio Hoyos and W. Thomas Chaney shall be accepted for filing. **IT IS FURTHER DIRECTED** that the Project Costs shall be produced, examined, and used only in accordance with the following conditions:

(1) For purposes of responding to interrogatories or data requests propounded by Parties in this proceeding, the production and handling of the Project Costs shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the other party seeking access. While the Staff is bound by the terms of this

Ruling, it is not required to execute a nondisclosure agreement in order to gain access to the Project Costs.

(2) The Project Costs need not be made available to entities that sell electricity (capacity or energy) on the open market in retail or wholesale transactions ("Electricity Marketers"). If a party has divisions or affiliated companies that are Electricity Marketers, the Project Costs will not be shown to, shared with, or disseminated in any manner to such divisions or affiliated companies that are Electricity Marketers. Except for its use in Case No. PUE010169 and without limiting the generality of the foregoing, such Project Costs shall not be used by the recipient, in any manner, to gain an advantage over the producing party or for any other purpose in litigation, negotiation, competition or consultation.

(3) CINCAP should clearly label the Project Costs and list it as attachment to the nondisclosure agreement.

(4) CINCAP shall immediately provide the requesting party with a log specifying the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (e.g., computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; and (v) the nature of the information; and (vi) the basis for the claim that the information is competitively sensitive. The obligations imposed by this paragraph shall be in addition to CINCAP's obligation to make specific objections to a data request that seeks access to the Project Costs.

(5) The Clerk of the Commission is directed to maintain under seal the Project Costs filed with the Commission.

(6) In the event Staff or parties seek to introduce testimony, exhibits, or studies that disclose the Project Costs, the Staff or the party seeking such introduction shall:

- (a) Notify CINCAP at least three (3) days in advance of any hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice CINCAP.
- (b) If such testimony is prefiled, file such testimony, exhibits or studies under seal and also file copies deleting those parts that contain references to or portions of the Project Costs. The testimony, exhibits, or studies containing the Project Costs shall be kept under seal unless or until the Commission or Examiner rules to the contrary. Each party shall, upon signing an appropriate nondisclosure agreement, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Project Costs and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and

granting of access to the Project Costs. That portion of the transcript recording such testimony shall be placed in the record under seal.

(7) Oral testimony regarding the Project Costs, if ruled admissible, will be taken *in camera* and that portion of the transcript recording such testimony shall be placed in the record under seal.

(8) No person authorized under this Protective Ruling to have access to the Project Costs shall disseminate, communicate, or reveal any of such Project Costs to any person not specifically authorized under this Protective Ruling to have access to such Project Costs.

(9) At the conclusion of this proceeding (including any appeals), any originals or reproductions of the Project Costs produced pursuant to this Ruling shall be returned by the requesting Party to CINCAP (or destroyed) if requested to do so by CINCAP. At such time, any originals or reproductions of Project Costs in Staff's possession will be returned to CINCAP, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Project Costs. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Project Costs produced hereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Project Costs.

(10) CINCAP is obligated to separate non-confidential documents, materials, and information from the Project Costs wherever practicable, and to provide the non-confidential documents, materials, and information forthwith.

Deborah V. Ellenberg
Chief Hearing Examiner